

OLC 74-0400

19 March 1974

MEMORANDUM FOR: Legislative Counsel

SUBJECT: Age Non-Discrimination in Government  
Legislation

1. The Fair Labor Standards Amendments of 1974 (Minimum Wage Bill) S. 2747 passed the Senate on 7 March with an age non-discrimination amendment by Senator Bentsen (D-Tex). The House bill, H. R. 12435, contains the same provision and should pass the House in the very near future.

2. The bills extend the Age Discrimination Act of 1967 to cover all applicants and employees in Executive departments and agencies. The Civil Service Commission is granted the enforcing authority and any aggrieved person may bring court action. The CSC may make "reasonable exemptions" and establish a maximum age requirement if age is a bona fide occupational qualification necessary to the performance of duties of a position. If either bill becomes law, all Agency personnel actions involving age if a factor, i. e., the mandatory retirement under CIARDS and the age 60 retirement policy, will be affected.

3. The Senate Committee report (S. 93-690) on S. 2747 does not reflect an administration position on the age discrimination provision but notes a comment in a Presidential message of March 23, 1972, supporting the extension of the age discrimination ban to Federal employment. CSC in 1971 initiated legislation to extend the age discrimination provision for competitive service applicants to all applicants for Federal employment. In commenting to OMB on the proposal, CIA sought but did not get a full exemption on the grounds that the Director's statutory authorities were affected.

CSC presumably would not object to S. 2747 and H. R. 12435 which extend the ban to all personnel actions in Government, particularly since they will administer the program. Ralph Malvik, OMB, was called on 15 March and our concerns were discussed. He suggested that we work it out with CSC and seek assistance in the Congress if we feel the Director's authorities are affected.

4. There are two approaches which would relieve CIA from the provision of the bills:

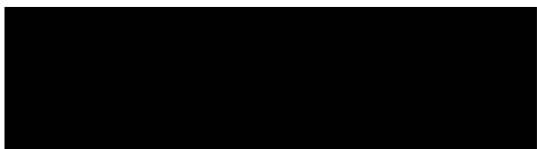
- (a) Seek an amendment.
- (b) Seek legislative history for inclusion in the conference committee report.

The latter approach was followed to protect the Director's authorities when the Congress passed the Equal Employment Opportunity Act of 1972, PL 92-261, which precludes discrimination in all Executive agencies on the basis of race, color, religion, sex or national origin. The following language was inserted in the conference report, S. 92-899, on page 21:

"In providing the statutory basis for such appeal or court access, it is not the intent of the Committee to subordinate any discretionary authority or final judgment now reposed in agency heads by, or under, statute for national security reasons in the interests of the United States."

5. Attached are proposals for the two above courses of action. The legislative history approach seems more feasible though the possibility of amendment could present itself. In either case, Office of Personnel should get a reading from CSC on our proposed action before we contact the Hill.

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Assistant Legislative Counsel

Att.

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PROPOSED AMENDMENT

In Section 28, "Age Discrimination," add the following amendment to the proposed new Section 15. "NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT" to the Age Discrimination in Employment Act of 1967.

"(f) This section shall not apply to agencies having positions which, pursuant to statute, subject the incumbents to mandatory retirement after twenty-five years of service, or termination in the interests of the United States, at the discretion of the agency head."

PROPOSED LEGISLATIVE HISTORY

For inclusion as appropriate in the conference committee report:

"The Committee recognizes, however, the mandatory statutory retirement programs after twenty-five years of service and the statutory termination authority in the interests of the United States existing in certain agencies. It is not the intent of the Committee to subordinate any discretionary authority or final judgment of agency heads pursuant to such statutory authorities."